

Senator Ed Mayne proposes the following substitute bill:

LENDERS REGISTRATION ACTS

AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ed Mayne

House Sponsor: David Clark

LONG TITLE

General Description:

This bill modifies the Check Cashing Registration Act and the Title Lending Registration Act.

Highlighted Provisions:

This bill:

- ▶ provides for an administrative fine under certain circumstances related to the failure to be registered under the registration acts;
- ▶ expands the disclosures required for a deferred deposit loan;
- ▶ expands requirements for contracts of loans under the registration acts;
- ▶ establishes requirements for rolling over a deferred deposit loan;
- ▶ adds to the operational requirements of lenders under the registration acts;
- ▶ addresses the use of a check casher's name on an application and promissory note;
- ▶ addresses transactions involving persons other than the check casher;
- ▶ provides for enforcement by the department of specified federal statutes and regulations incorporated into the registration acts and of administrative rules;
- ▶ addresses the timing of check casher's responding to certain complaints;
- ▶ addresses rulemaking;



- 26 ▶ requires the department to respond in writing to certain written complaints;
- 27 ▶ addresses timing of examinations;
- 28 ▶ provides for the imposition of administrative fines in general; and
- 29 ▶ makes technical changes.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 **AMENDS:**

- 36 **7-23-103**, as last amended by Chapter 69, Laws of Utah 2003
- 37 **7-23-105**, as last amended by Chapter 69, Laws of Utah 2003
- 38 **7-23-106**, as last amended by Chapter 69, Laws of Utah 2003
- 39 **7-23-107**, as last amended by Chapter 69, Laws of Utah 2003
- 40 **7-23-108**, as enacted by Chapter 144, Laws of Utah 1999
- 41 **7-24-201**, as enacted by Chapter 236, Laws of Utah 2003
- 42 **7-24-202**, as enacted by Chapter 236, Laws of Utah 2003
- 43 **7-24-301**, as enacted by Chapter 236, Laws of Utah 2003
- 44 **7-24-303**, as enacted by Chapter 236, Laws of Utah 2003



46 *Be it enacted by the Legislature of the state of Utah:*

47 Section 1. Section **7-23-103** is amended to read:

48 **7-23-103. Registration -- Rulemaking.**

49 (1) (a) It is unlawful for a person to engage in the business of a check casher in Utah or
50 with a Utah resident unless the person:

- 51 (i) registers with the department in accordance with this chapter; and
- 52 (ii) maintains a valid registration.

53 (b) It is unlawful for a person to operate a mobile facility in this state to engage in the
54 business of a check casher.

55 ~~[(c) Notwithstanding Subsection (1)(a), a person that is engaged in the business of a~~
56 ~~check casher in this state on May 3, 1999, is not required to be registered under this section~~

57 ~~until July 1, 1999.]~~

58 (2) (a) A registration and a renewal of a registration expires on April 30 of each year
59 unless on or before that date the person renews the registration.

60 (b) To register under this section, a person shall:

61 (i) pay an original registration fee established under Subsection 7-1-401(8); and

62 (ii) submit a registration statement containing the information described in Subsection

63 (2)(d).

64 (c) To renew a registration under this section, a person shall:

65 (i) pay the annual fee established under Subsection 7-1-401(5); and

66 (ii) submit a renewal statement containing the information described in Subsection

67 (2)(d).

68 (d) A registration or renewal statement shall state:

69 (i) the name of the person;

70 (ii) the name in which the business will be transacted if different from that required in

71 Subsection (2)(d)(i);

72 (iii) the address of the person's principal business office, which may be outside this

73 state;

74 (iv) the addresses of all offices in this state at which the person conducts the business

75 of a check casher;

76 (v) if the person conducts the business of a check casher in this state but does not

77 maintain an office in this state, a brief description of the manner in which the business is

78 conducted;

79 (vi) the name and address in this state of a designated agent upon whom service of

80 process may be made;

81 (vii) disclosure of any injunction, judgment, administrative order, or conviction of any

82 crime involving moral turpitude with respect to that person or any officer, director, manager,

83 operator, or principal of that person; and

84 (viii) any other information required by the rules of the department.

85 (e) (i) The commissioner may impose an administrative fine determined under

86 Subsection (2)(e)(ii) on a person if:

87 (A) the person is required to be registered under this chapter;

88 (B) the person fails to register or renew a registration in accordance with this chapter;

89 (C) the department notifies the person that the person is in violation of this chapter for
90 failure to be registered; and

91 (D) the person fails to register within 30 days after the day on which the person
92 receives the notice described in Subsection (2)(e)(i)(C).

93 (ii) Subject to Subsection (2)(e)(iii), the administrative fine is:

94 (A) \$500 if the person:

95 (I) has no office in this state at which the person conducts the business of a check
96 cashier; or

97 (II) has one office in this state at which the person conducts the business of a check
98 cashier; or

99 (B) if the person has two or more offices in this state at which the person conducts the
100 business of a check cashier, \$500 for each office at which the person conducts the business of a
101 check cashier.

102 (iii) The commissioner may reduce or waive a fine imposed under this Subsection
103 (2)(e) if the person shows good cause.

104 (3) If the information in a registration or renewal statement required under Subsection
105 (2) becomes inaccurate after filing, a person is not required to notify the department until:

106 (a) that person is required to renew the registration; or

107 (b) the department specifically requests earlier notification.

108 (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
109 department may make rules consistent with this section providing for the form, content, and
110 filing of a registration and renewal statement.

111 Section 2. Section **7-23-105** is amended to read:

112 **7-23-105. Operational requirements for deferred deposit loans.**

113 (1) If a check cashier extends a deferred deposit loan, the check cashier shall:

114 (a) post in a conspicuous location on its premises that can be viewed by a person
115 seeking a deferred deposit loan:

116 (i) a complete schedule of any interest or fees charged for a deferred deposit loan that
117 states the interest and fees using dollar amounts;

118 (ii) a number the person can call to make a complaint to the department regarding the

119 deferred deposit loan; and

120 (iii) a list of states where the check casher is registered or authorized to offer deferred

121 deposit loans through the Internet or other electronic means;

122 (b) enter into a written contract for the deferred deposit loan;

123 (c) conspicuously disclose in the written contract:

124 (i) that under Subsection (3)(a), a person receiving a deferred deposit loan may make a

125 partial payment in increments of at least \$5 on the principal owed on the deferred deposit loan

126 without incurring additional charges above the charges provided in the written contract;

127 (ii) that under Subsection (3)(b), a person receiving a deferred deposit loan may rescind

128 the deferred deposit loan on or before 5 p.m. of the next business day without incurring any

129 charges;

130 (iii) that[;] under Subsection (4)(b), the deferred deposit loan may not be rolled over

131 [beyond] without the person receiving the deferred deposit loan requesting the rollover of the

132 deferred deposit loan;

133 (iv) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the

134 rollover requires the person to pay the amount owed by the person under the deferred deposit

135 loan in whole or in part more than 12 weeks after the day on which the deferred deposit loan is

136 executed; and

137 (v) (A) the name and address of a designated agent required to be provided the

138 department under Subsection 7-23-103(2)(d)(vi); and

139 (B) a statement that service of process may be made to the designated agent;

140 (d) provide the person seeking the deferred deposit loan a copy of the deferred deposit

141 contract;

142 (e) orally review with the person seeking the deferred deposit loan the terms of the

143 deferred deposit loan including:

144 (i) the amount of any interest rate or fee;

145 (ii) the date on which the full amount of the deferred deposit loan is due; [~~and~~]

146 (iii) that under Subsection (3)(a), a person receiving a deferred deposit loan may make

147 a partial payment in increments of at least \$5 on the principal owed on the deferred deposit

148 loan without incurring additional charges above the charges provided in the written contract;

149 (iv) that under Subsection (3)(b), a person receiving a deferred deposit loan may

150 rescind the deferred deposit loan on or before 5 p.m. of the next business day without incurring
151 any charges;

152 ~~[(iii) the fact]~~ (v) that under Subsection (4)(b), the deferred deposit loan may not be
153 rolled over ~~beyond~~ without the person receiving the deferred deposit loan requesting the
154 rollover of the deferred deposit loan; and

155 (vi) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the
156 rollover requires the person to pay the amount owed by the person under the deferred deposit
157 loan in whole or in part more than 12 weeks after the day on which the deferred deposit loan is
158 executed; and

159 (f) comply with:

160 (i) Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq., and its implementing federal
161 regulations;

162 (ii) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691[;], and its implementing federal
163 regulations;

164 (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. 1951 through 1959, and 31
165 U.S.C. Sec. 5311 through 5332, and its implementing federal regulations; and

166 ~~[(iii)]~~ (iv) Title 70C, Utah Consumer Credit Code.

167 (2) If a check casher extends a deferred deposit loan through the Internet or other
168 electronic means, the check casher shall provide the information described in Subsection (1)(a)
169 to the person receiving the deferred deposit loan:

170 (a) in a conspicuous manner; and

171 (b) prior to the ~~completion of~~ person entering into the deferred deposit loan.

172 (3) A check casher that engages in a deferred deposit loan shall permit a person
173 receiving a deferred deposit loan to:

174 (a) make partial payments in increments of at least \$5 on the principal owed on the
175 deferred deposit loan at any time prior to maturity without incurring additional charges above
176 the charges provided in the written contract; and

177 (b) rescind the deferred deposit loan without incurring any charges by returning the
178 deferred deposit loan amount to the check casher on or before 5 p.m. the next business day
179 following the deferred deposit loan transaction.

180 (4) A check casher that engages in a deferred deposit loan may not:

181 (a) collect additional interest on a deferred deposit loan with an outstanding principal
182 balance 12 weeks after the day on which the deferred deposit loan is executed;

183 (b) ~~[rollover]~~ roll over a deferred deposit loan without the person receiving the deferred
184 deposit loan requesting the rollover of the deferred deposit loan;

185 (c) roll over a deferred deposit loan if the rollover requires a person to pay the amount
186 owed by the person under a deferred deposit loan in whole or in part more than 12 weeks from
187 the day on which the deferred deposit loan is first executed; or

188 ~~[(e)]~~ (d) threaten to use or use the criminal process in any state to collect on the
189 deferred deposit loan.

190 (5) Notwithstanding Subsections (4)(a) and ~~(4)~~~~[(e)]~~(d), a check casher that is the holder
191 of a check, draft, order, or other instrument that has been dishonored may use the remedies and
192 notice procedures provided in Title 7, Chapter 15, Dishonored Instruments.

193 (6) For a deferred deposit loan executed on or after May 1, 2006, a check casher that
194 extends a deferred deposit loan:

195 (a) shall use only the name listed in Subsection 7-23-103(2)(d)(i) or (ii) on:

196 (i) an application for a deferred deposit loan; and

197 (ii) the promissory note for a deferred deposit loan; and

198 (b) may not arrange a deferred deposit loan on behalf of another person if that person is
199 not registered as a check casher under this chapter.

200 Section 3. Section **7-23-106** is amended to read:

201 **7-23-106. Enforcement by department -- Rulemaking -- Complaints.**

202 (1) Subject to the requirements of Title 63, Chapter 46b, Administrative Procedures
203 Act, the department may:

204 ~~[(1)]~~ (a) receive and act on complaints;

205 (b) take action designed to obtain voluntary compliance with this chapter;

206 (c) commence administrative or judicial proceedings on its own initiative to enforce
207 compliance with this chapter including the federal law incorporated by reference to this chapter
208 under Section 7-23-105; or

209 (d) take action against any check casher that fails to:

210 (i) respond to the department, in writing within ~~[30]~~ 15 business days, to a complaint
211 filed with the department; or

212 (ii) submit information as requested by the department[;].
 213 (2) The department may:
 214 ~~[(2)]~~ (a) counsel persons and groups on their rights and duties under this chapter;
 215 ~~[(3)]~~ (b) make rules in accordance with Title 63, Chapter 46a, Utah Administrative
 216 Rulemaking Act, to:
 217 ~~[(a)]~~ (i) restrict or prohibit lending or servicing practices that are misleading, unfair, or
 218 abusive;
 219 ~~[(b)]~~ (ii) promote or assure fair and full disclosure of the terms and conditions of
 220 agreements and communications between check cashers and customers; or
 221 ~~[(c)]~~ (iii) promote or assure uniform application of or to resolve ambiguities in
 222 applicable state or federal laws or federal regulations; and
 223 ~~[(4)]~~ (c) employ hearing examiners, clerks, and other employees and agents as
 224 necessary to perform ~~[its]~~ the department's duties under this chapter.
 225 (3) The department shall:
 226 (a) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
 227 make rules establishing when information required to be conspicuously disclosed in a contract
 228 under this chapter is considered to be conspicuously disclosed; and
 229 (b) respond in writing to a complaint filed with the department:
 230 (i) by no later than 30 business days from the day on which the complaint is filed with
 231 the department; and
 232 (ii) if the complaint:
 233 (A) is in writing;
 234 (B) provides an address to which the department may send a response; and
 235 (C) is made by a person who:
 236 (I) obtains a deferred deposit loan covered by this chapter; or
 237 (II) is denied a deferred deposit loan covered by this chapter for a reason required to be
 238 disclosed under the Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691, and its implementing
 239 federal regulations.
 240 Section 4. Section **7-23-107** is amended to read:
 241 **7-23-107. Examination of books, accounts, and records by the department.**
 242 (1) At least ~~[once every calendar year]~~ annually the department shall, for each premise

243 engaging in the business of a check casher:

- 244 (a) examine the books, accounts, and records; and
- 245 (b) make investigations to determine compliance with this chapter.

246 (2) In accordance with Section 7-1-401, the check casher shall pay a fee for an
247 examination conducted under Subsection (1).

248 Section 5. Section **7-23-108** is amended to read:

249 **7-23-108. Penalties.**

250 (1) A person who violates this chapter or who files materially false information with a
251 registration or renewal under Section 7-23-103 is:

252 (a) guilty of a class B misdemeanor except for a violation of:

253 (i) Subsection 7-23-105(1)(f)(i), (ii), or (iii); or

254 (ii) rules made under Section 7-23-106; and

255 (b) subject to revocation of a person's registration under this chapter.

256 (2) Subject to Title 63, Chapter 46b, Administrative Procedures Act, if the department
257 determines that a person is engaging in the business of cashing checks in violation of this
258 chapter, the department may:

259 (a) revoke that person's registration under this chapter;

260 (b) issue a cease and desist order from committing any further violations; [~~or~~]

261 (c) prohibit the person from continuing to engage in the business of a check casher[-];

262 (d) impose an administrative fine not to exceed \$1,000 per violation, except that a fine

263 imposed under Subsection 7-23-103(2)(e) shall comply with Subsection 7-23-103(2)(e); or

264 (e) take any combination of actions listed under this Subsection (2).

265 Section 6. Section **7-24-201** is amended to read:

266 **7-24-201. Registration -- Rulemaking.**

267 (1) (a) It is unlawful for a person to extend a title loan in Utah or with a Utah resident
268 unless the person:

269 (i) registers with the department in accordance with this chapter; and

270 (ii) maintains a valid registration.

271 (b) It is unlawful for a person to operate a mobile facility in this state to extend a title
272 loan.

273 [~~(c) Notwithstanding Subsection (1)(a), a person that is a title lender in this state on~~]

274 ~~May 5, 2003, is not required to be registered under this section until July 1, 2003.]~~

275 (2) (a) A registration and a renewal of a registration expires on April 30 of each year
276 unless on or before that date the person renews the registration.

277 (b) To register under this section, a person shall:

278 (i) pay an original registration fee established under Subsection 7-1-401(8); and

279 (ii) submit a registration statement containing the information described in Subsection

280 (2)(d).

281 (c) To renew a registration under this section, a person shall:

282 (i) pay the annual fee established under Subsection 7-1-401(5); and

283 (ii) submit a renewal statement containing the information described in Subsection

284 (2)(d).

285 (d) A registration or renewal statement shall state:

286 (i) the name of the person;

287 (ii) the name in which the business will be transacted if different from that required in

288 Subsection (2)(d)(i);

289 (iii) the address of the person's principal business office, which may be outside this
290 state;

291 (iv) the addresses of all offices in this state at which the person extends title loans;

292 (v) if the person extends title loans in this state but does not maintain an office in this
293 state, a brief description of the manner in which the business is conducted;

294 (vi) the name and address in this state of a designated agent upon whom service of
295 process may be made;

296 (vii) disclosure of any injunction, judgment, administrative order, or conviction of any
297 crime involving moral turpitude with respect to that person or any officer, director, manager,
298 operator, or principal of that person; and

299 (viii) any other information required by the rules of the department.

300 (e) (i) The commissioner may impose an administrative fine determined under

301 Subsection (2)(e)(ii) on a person if:

302 (A) the person is required to be registered under this chapter;

303 (B) the person fails to register or renew a registration in accordance with this chapter;

304 (C) the department notifies the person that the person is in violation of this chapter for

305 failure to be registered; and

306 (D) the person fails to register within 30 days after the day on which the person
307 receives the notice described in Subsection (2)(e)(i)(C).

308 (ii) Subject to Subsection (2)(e)(iii), the administrative fine is:

309 (A) \$500 if the person:

310 (I) has no office in this state at which the person extends a title loan; or

311 (II) has one office in this state at which the person extends a title loan; or

312 (B) if the person has two or more offices in this state at which the person extends a title
313 loan, \$500 for each office at which the person extends a title loan.

314 (iii) The commissioner may reduce or waive a fine imposed under this Subsection
315 (2)(e) if the person shows good cause.

316 (3) If the information in a registration or renewal statement required under Subsection
317 (2) becomes inaccurate after filing, a person is not required to notify the department until:

318 (a) that person is required to renew the registration; or

319 (b) the department specifically requests earlier notification.

320 (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
321 department may make rules consistent with this section providing for the form, content, and
322 filing of a registration and renewal statement.

323 Section 7. Section **7-24-202** is amended to read:

324 **7-24-202. Operational requirements for title loans.**

325 (1) A title lender shall:

326 (a) post in a conspicuous location on its premises that can be viewed by a person
327 seeking a title loan:

328 (i) a complete schedule of any interest or fees charged for a title loan that states the
329 interest and fees:

330 (A) as dollar amounts; and

331 (B) as annual percentage rates; and

332 (ii) a telephone number a person may call to make a complaint to the department
333 regarding a title loan;

334 (b) enter into a written contract for the title loan containing:

335 (i) the name of the person receiving the title loan;

- 336 (ii) the transaction date;
- 337 (iii) the amount of the title loan; [~~and~~]
- 338 (iv) a statement of the total amount of any interest or fees that may be charged for the
- 339 title loan, expressed as:
 - 340 (A) a dollar amount; and
 - 341 (B) an annual percentage rate; and
 - 342 (v) (A) the name and address of the designated agent required to be provided the
 - 343 department under Subsection 7-24-201(2)(d)(vi); and
 - 344 (B) a statement that service of process may be made to the designated agent;
- 345 (c) provide the person seeking the title loan a copy of the written contract described in
- 346 Subsection (1)(b);
- 347 (d) prior to the execution of the title loan:
 - 348 (i) orally review with the person seeking the title loan the terms of the title loan
 - 349 including:
 - 350 (A) the amount of any interest rate or fee, expressed as:
 - 351 (I) a dollar amount; and
 - 352 (II) an annual percentage rate; and
 - 353 (B) the date on which the full amount of the title loan is due; and
 - 354 (ii) provide the person seeking the title loan a copy of the disclosure form adopted by
 - 355 the department under Section 7-24-203; and
 - 356 (e) comply with:
 - 357 (i) Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq., and its implementing federal
 - 358 regulations;
 - 359 (ii) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691[;], and its implementing federal
 - 360 regulations;
 - 361 (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and
 - 362 31 U.S.C. Sec. 5311 and 5332, and its implementing federal regulations; and
 - 363 [(iii)] (iv) Title 70C, Utah Consumer Credit Code.
 - 364 (2) If a title lender extends a title loan through the Internet or other electronic means,
 - 365 the title lender shall:
 - 366 (a) provide the information described in Subsection (1)(a) to the person receiving the

367 title loan;
368 (i) in a conspicuous manner; and
369 (ii) prior to the ~~[completion of]~~ person entering into the title loan; and
370 (b) in connection with the disclosure required under Subsection (2)(a), provide a list of
371 states where the title lender is registered or authorized to offer title loans through the Internet or
372 other electronic means.

373 (3) A title lender may not:

374 (a) rollover a title loan unless the person receiving the title loan requests a rollover of
375 the title loan;

376 (b) extend more than one title loan on any vehicle at one time;

377 (c) extend a title loan that exceeds the fair market value of the vehicle securing the title
378 loan; or

379 (d) extend a title loan without regard to the ability of the person seeking the title loan to
380 repay the title loan, including the person's:

381 (i) current and expected income;

382 (ii) current obligations; and

383 (iii) employment.

384 (4) A title lender has met the requirements of Subsection (3)(d) if the person seeking a
385 title loan provides the title lender with a signed acknowledgment that:

386 (a) the person has provided the title lender with true and correct information
387 concerning the person's income, obligations, and employment; and

388 (b) the person has the ability to repay the title loan.

389 Section 8. Section **7-24-301** is amended to read:

390 **7-24-301. Enforcement by department -- Rulemaking.**

391 (1) Subject to the requirements of Title 63, Chapter 46b, Administrative Procedures
392 Act, the department may:

393 ~~(1)~~ (a) receive and act on complaints;

394 (b) take action designed to obtain voluntary compliance with this chapter; or

395 (c) commence administrative or judicial proceedings on its own initiative to enforce
396 compliance with this chapter[;] including the federal law incorporated by reference to this
397 chapter under Section 7-24-202.

- 398 (2) The department may:
- 399 [~~2~~] (a) counsel persons and groups on their rights and duties under this chapter;
- 400 [~~3~~] (b) make rules to:
- 401 [~~a~~] (i) restrict or prohibit lending or servicing practices that are misleading, unfair, or
- 402 abusive;
- 403 [~~b~~] (ii) promote or assure fair and full disclosure of the terms and conditions of
- 404 agreements and communications between title lenders and customers; or
- 405 [~~c~~] (iii) promote or assure uniform application of or to resolve ambiguities in
- 406 applicable state or federal laws or federal regulations; and
- 407 [~~4~~] (c) employ hearing examiners, clerks, and other employees and agents as
- 408 necessary to perform the department's duties under this chapter.

Section 9. Section **7-24-303** is amended to read:

7-24-303. Penalties.

(1) A person who violates this chapter or who files materially false information with a registration or renewal under Section 7-24-201 is:

- 413 (a) guilty of a class B misdemeanor[; ~~and~~] except for a violation of:
- 414 (i) Subsection 7-24-202(1)(e)(i), (ii), or (iii); or
- 415 (ii) rules made under Subsection 7-24-301(2)(b); and

(b) subject to revocation of a person's registration under this chapter.

(2) Subject to Title 63, Chapter 46b, Administrative Procedures Act, if the department determines that a person is extending title loans in violation of this chapter, the department may:

- 420 (a) revoke that person's registration under this chapter;
- 421 (b) issue a cease and desist order from committing any further violations; [~~or~~]
- 422 (c) prohibit the person from continuing to extend title loans[-];
- 423 (d) impose an administrative fine not to exceed \$1,000 per violation, except that a fine
- 424 imposed under Subsection 7-24-201(2)(e) shall comply with Subsection 7-24-201(2)(e); or
- 425 (e) take any combination of actions listed under this Subsection (2).

(3) A person is not subject to the penalties under this section for a violation of this chapter that was not willful or intentional, including a violation resulting from a clerical error.